

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 27.20, 27.25, 27.30, 27.32, 27.35, 27.40, 27.45, 27.50, 27.51,
28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55,
28.56, 28.57, and 28.58;

Title 14, California Code of Regulations,
Re: Recreational Fishing Regulations For Federal Groundfish
and Associated Species For 2009 and 2010

- I. Date of Initial Statement of Reasons: August 18, 2008
- II. Date of Pre-adoption Statement of Reasons: N/A
- III. Date of Final Statement of Reasons: December 4, 2008
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: September 4, 2008
Location: Kings Beach, CA
 - (b) Discussion Hearing: Date: October 3, 2008
Location: Santa Rosa, CA
 - (c) Adoption Hearing: Date: November 14, 2008
Location: Huntington Beach, CA
- V. Update: Non-substantive modifications were made to the originally proposed language of the Initial Statement of Reasons to reflect the expiration of the May 2008 emergency action OAL# 2008 0505 01E on November 5, 2008. The May 2008 emergency actions included season length and depth restrictions, section headings and clarification for special closure areas in Section 27.20, and Marine Region website address, authority, and reference updates for most of the amended sections. Most of these changes from the May 2008 emergency action are non-substantive and were added back into this Final Statement of Reasons as new changes. Substantive changes, such as the season length and depth restrictions, were fully described in the notice for this package (the Initial Statement of Reasons) and will be carried over with this approved regulatory package.

At the November 14, 2008 adoption hearing, the Commission approved the proposed regulatory amendments to the recreational groundfish fishing regulations.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

The Commission received five written comments and two oral comments in opposition to the proposed regulatory actions. The comments are listed below in Table 1.

Table 1. Recreational Groundfish Fishing Regulations for 2009 and 2010 Public Comments Received and Department Responses, Complete Through November 14, 2008 Adoption Hearing

Comment #, Format, Name, Date, Location	Summary of Comment	Department Response
<p>Comment #1 E Gerry Hemmingsen, Del Norte County, CA ghemmingsen@co.del-norte.ca.us 10/2/2008</p> <p>E= Electronic Mail, L= Letter, O= Oral Comment</p>	<p>A. The Department and Commission have demonstrated poor timing regarding the regulation notification. There is a very short time period for public review, research, and preparation.</p> <p>B. In reviewing the regulations there seems to be no analysis of alternatives.</p> <p>C. The Department did not coordinate with local governments to accept input. Local governments were not notified of the proposed regulatory changes.</p>	<p>A. The Administrative Procedures Act requires a minimum 45-day period allowing the public the opportunity to review and comment on any proposed regulatory language. The Fish and Game Commission (Commission) notified those parties who identified themselves as interested in proposed changes to recreational fishing regulations by close of business on September 26, 2008, the day the Office of Administrative Law released their notice register. The public comment period for this item extends from September 26 through November 14, 2008, exceeding the minimum 45-day public comment period.</p> <p>The proposed regulation changes are being made so that regulations in state waters (0-3 miles offshore) and federal waters (3-200 miles offshore) are the same. In early 2008, the Pacific Fishery Management Council (Council) held hearings and underwent a long process of negotiations between the states of Washington, Oregon, and California. Beginning in March 2008, the Council invited public comment on the proposed recreational groundfish fishing regulation alternatives. The Department solicited input from its Groundfish Taskforce members during two teleconferences, one in October 2007 and one in March 2008. In May 2008 the Department filed an official press release announcing two public meetings, one in Trinidad and one in Santa Rosa, to accept public feedback and discuss the proposed 2009 and 2010 regulations. The California recreational season and bag limits for federal waters were adopted at the June Council meeting after the Council reviewed advice from advisory committees, fishery representatives, state Department managers, and the general public. Considering both state and federal venues, the public had from March through November 14th to comment on the proposed changes.</p> <p>B. Preparatory for federal regulations, all management measure alternatives and harvest limits were analyzed in a draft environmental impact statement (EIS) that was published in August 2008. The draft EIS is available at: http://www.pcouncil.org/groundfish/gfspex/gfspex09-10.html.</p> <p>C. Local governments have the same opportunities afforded the public to participate in both state and federal processes. As mentioned above, the Department hosted two public meetings, and the Council discussed this item at two of their meetings in spring and summer of 2008. The Commission routinely notifies the public of an intended regulatory change by mailing the proposed language to interested and affected parties and posting it on their website. Any individual or entity may ask to be added to the mailing list.</p>

Comment #, Format, Name, Date, Location	Summary of Comment	Department Response
<p>Comment #2 L Joe G. Welz, Clear Lake Oaks, CA 10/2/2008</p> <p>E= Electronic Mail, L= Letter, O= Oral Comment</p>	<p>A. It is a crime against all Californians to permanently close Cordell Banks.</p> <p>B. The mortality rate for released cabezon is zero. The analyses that went into the proposed action to increase the cabezon bag limit are wrong.</p> <p>C. Yelloweye and canary rockfishes caught in legal depths should be allowed to be retained because if they are released they will likely die.</p>	<p>A. The waters around Cordell Banks have been closed since 2004. The proposed action would only clarify the regulatory text in 27.20(b); it is not proposing any new regulations. The section should effectively explain that unless there is a special exemption, the take of groundfish and associated species is prohibited in special closure areas (e.g., Cordell Banks closure) even when the rest of the management area is open. The clarifying text is meant to benefit all readers including resource managers, enforcement personnel, and the general public.</p> <p>B. The Department can allow the additional take of cabezon because recent catches have consistently fallen below the recreation harvest guideline. Increasing the statewide bag limit to two fish will still keep catches below the harvest guideline. Although cabezon do not have swim bladders, and they do not undergo barotrauma like many of the rockfish species, some released cabezon inadvertently die due to hooking mortality and handling.</p> <p>C. Yelloweye rockfish and canary rockfish are two "overfished" species whose populations are not recovering quickly due to their life history characteristics. The recently re-authorized federal Magnuson-Stevens Act requires that overfished stocks be rebuilt as quickly as possible which can only be accomplished by severely limiting catch. The harvest guidelines for yelloweye and canary rockfishes are so low that directed take is prohibited. Prohibiting retention of these species is intended to prevent direct targeting and to deter anglers from fishing in a location where they have encountered these species. Overfished species, such as yelloweye and canary rockfishes, are required to be rebuilt as quickly as possible and allowing retention would slow rebuilding. Therefore, no retention is allowed for all overfished groundfish species, except bocaccio which is rebuilding ahead of schedule. Without such a regulation, the overall season length would have to be reduced to mitigate increased impacts due to retention. Some of the yelloweye and canary rockfishes that are released do survive and a percentage of released fish are not counted against the recreational harvest guideline. If all yelloweye and canary rockfishes caught by recreational anglers were kept, California would reach the harvest guidelines much more quickly, and groundfish fishing opportunities would be further restricted (e.g., shorter seasons, depth restrictions).</p>

Comment #, Format, Name, Date, Location	Summary of Comment	Department Response
<p>Comment #3 E Jay Bromley, Ukiah, CA jaybrom@saber.net 10/3/2008</p> <p>E= Electronic Mail, L= Letter, O= Oral Comment</p>	<p>A. Recommends voting against the proposed regulatory changes because yelloweye rockfish is not a problem in the North-Central North of Point Arena Management Area.</p> <p>B. The proposed season of May 15 to August 15 is too early in the year for adequate fishing conditions. Weather in the spring and early summer months are typically rough on the Mendocino coast and are not conducive to recreational groundfish fishing.</p>	<p>A. The proposed changes were developed after the Council adopted and the National Marine Fisheries Service approved the federal optimum yield for yelloweye rockfish along with recreational state harvest guidelines, which must be adhered to in state and federal waters. The scientific basis of the low abundance of this species is the recent stock assessment titled "Update to the status of yelloweye rockfish off the U.S. West Coast in 2007" (available at: http://www.pcouncil.org/bb/2007/0607/Groundfish_Assessments_E6/Yelloweye_Update_2007_Final.pdf) which states that "the assessment... (Wallace, et al. 2006) contained both a coast-wide model and area models for Washington, Oregon, and California." Until a new assessment by the federal government states otherwise, the official status of yelloweye rockfish is that it is "overfished", and therefore subject to strict federal stock rebuilding requirements. These stringent requirements only allow for low incidental catch in any fishery. The June 2008 Council Briefing Book discussed the results of the assessment in the context of 2009 and 2010 groundfish management measures: http://www.pcouncil.org/groundfish/gfspex/gfspex09-10.html.</p> <p>B. From late 2007 through May of 2008, the Department hosted several public meetings and teleconferences with recreational fishery representatives to accept input from constituents regarding 2009 and 2010 management measures and recreational fishery season structure. Recreational anglers consistently agreed that the preferred season on the north coast is May 15 through September 15. However, yelloweye rockfish are highly constraining, meaning it limits the take of co-occurring species, especially north of Point Arena. The Department was unable to provide such a season for 2009 and 2010 and still remain within the federally-mandated harvest guidelines for yelloweye rockfish. Catch rates for yelloweye rockfish are not constant throughout the year; higher catch rates occur in August and September. Model projections and analyses showed that postponing the groundfish season opener would substantially reduce the overall season length to less than three months. The proposed season will allow groundfish fishing for a full three months, however it will not allow for substantial fishing opportunity later in the season, as the catch rates are far higher at that time. In general, for this highly constrained fishery, recreational anglers could choose from either a short season (two months) during peak months, or a longer season starting earlier in the year. The constituents who provided feedback to the Department and participated in the Council process chose the latter option.</p>

Comment #, Format, Name, Date, Location	Summary of Comment	Department Response
<p>Comment #4 O John Gebers, Fort Bragg, CA 10/3/2008</p> <p>E= Electronic Mail, L= Letter, O= Oral Comment</p>	<p>A. Fort Bragg's fishing opportunities will be unfairly constrained by placing it in a management area with Shelter Cove. Shelter Cove brings in a much higher percentage of yelloweye rockfish than Fort Bragg.</p> <p>B. Frustrated that the groundfish season has already been negotiated. Would have liked to solicit input.</p> <p>C. The North-Central North of Point Arena Management Area will have a groundfish season four weeks less than the North. Fiscal impacts will be huge to small businesses.</p> <p>D. The Department should give advanced notice of a fishery closure, a "thermometer" posted online.</p>	<p>A. There are no hard-set allocations of the harvest guidelines between management areas. Catches of overfished species are not equally distributed throughout the state. The Department and Council regulation development processes involve negotiations based on past and projected catches by area, trying to answer the question <i>How much fishing can be allowed in each area while California remains within the harvest guidelines?</i> The Department is committed to granting the public the greatest amount of fishing opportunities possible without exceeding federally-mandated harvest guidelines. Expanding the fishing opportunities in one area of the state leads to restricting opportunities elsewhere in the state. Yelloweye rockfish catch rates in Fort Bragg have consistently been much higher than ports to the south of Point Arena and similar to northern ports. Thus the North-Central North of Point Arena Management Area is located from Shelter Cove to Point Arena. Another consideration in creating management lines is the enforceability of regulations. Management areas need to be small enough for adequate fine-scale management, yet large enough to be enforceable and to keep regulations simple. If management areas are too small, regulations get too complex. If management areas are too large, resource managers are restricted to broad-scale management options that may adversely affect individual ports.</p> <p>B. See Comment #1, response A and B.</p> <p>C. The Department recognizes that there will be fiscal impacts to individuals because of the proposed regulations; however, quantitative analysis of these impacts is complex because there is still recreational ocean fishing opportunity for other desirable target species (e.g., albacore, halibut, salmon, striped bass, crabs) that are not managed as part of the groundfish complex.</p> <p>D. Comment noted. Outside the scope of this proposed regulatory action.</p>

Comment #, Format, Name, Date, Location	Summary of Comment	Department Response
<p>Comment #5 O Jim Martin; Recreational Fisherman's Alliance 10/3/2008</p> <p>E= Electronic Mail, L= Letter, O= Oral Comment</p>	<p>A. There is a healthy population of yelloweye rockfish off the Mendocino Coast. The stock assessment for yelloweye rockfish admits to being data-poor.</p> <p>B. There needs to be more groundfish fishing opportunities in federal waters. We are overfishing the nearshore habitats of California.</p> <p>C. The Department should allow take of one canary rockfish per bag limit.</p> <p>D. CRFS should add a question to their interview about the use of descending devices. We need to get an idea about how many recreational anglers are using them.</p>	<p>A. See Comment #3, response A.</p> <p>B. The suggestion of allowing groundfish fishing opportunities in deep-water on soft-bottom sediments in federal waters has potential, but it adds to the complexity of the regulations. Federal waters include deeper water inhabited by many overfished species (bocaccio, canary rockfish, cowcod, darkblotched rockfish, widow rockfish, and yelloweye rockfish). Increasing fishing opportunities in deeper water will increase the catch of these overfished species and would likely result in shorter seasons and lower bag limits for all rockfish. As the abundance of the overfished stocks increase, it may be possible to allow for additional fishing opportunities in shelf waters targeting on healthy shelf stocks.</p> <p>C. Allowing the take of canary rockfish could increase the catch rate for this overfished species which may result in a shorter fishing season in order to remain within the harvest guideline. With the exception of bocaccio, which is rebuilding well ahead of schedule, the take of overfished species is prohibited so that they can recover in the shortest time possible, as required by the federal Magnuson-Stevens Act. The assessed increase in the canary rockfish stock was predicated on a few strong year classes from recent reproductive events. A continuation of this trend in abundance is necessary before a one fish bag limit is feasible.</p> <p>D. Comment noted. Outside the scope of this proposed regulatory action.</p>

Comment #, Format, Name, Date, Location	Summary of Comment	Department Response
<p>Comment #6 E Bill Parducci, San Francisco Bay Area, CA billsr@parducci.net 10/8/2008</p> <p>E= Electronic Mail, L= Letter, O= Oral Comment</p>	<p>A. The proposed 2009 season will be six weeks shorter than 2008 in the North-Central South of Point Arena Management Area, even though the optimal yield numbers will not be achieved.</p> <p>B. November is the only month of the year when charter boat operators are able to offer rockfish and crab fishing combo-trips, however, this month is closed in the proposed regulations. The Commission does not recognize Charter Boats as a user group.</p> <p>C. The loss of six weeks fishing from charter boats is not considered a valid impact of this regulatory action. The effect of reducing the fishing season by 25 percent should be more than speculative.</p>	<p>A. Blue rockfish is the most constraining species in the North-Central South of Point Arena Management Area. Based on a new blue rockfish stock assessment, the statewide harvest guideline for blue rockfish in California will be 220 metric tons, with 180 metric tons allocated to the recreational fishery. Due to the large number of fishing trips taken in the North-Central South of Point Arena Groundfish Management Area, the Department estimates that 48 percent of the blue rockfish recreational harvest guideline (about 86 metric tons) will be taken there. This estimate is based on previous years' fishing activities using the proposed season length and depth restrictions. The start date of June 13 was set to allow for an extra weekend of fishing activity while keeping within the harvest guideline. This start date was specifically requested by recreational fishery representatives of the Council's Groundfish Advisory Sub-panel who recognized the importance of another weekend to the season. The greatest amount of groundfish fishing opportunity is extended to the public while groundfish catch is projected to remain within allowable harvest levels established by population assessments.</p> <p>B. No additional time could be allowed in November in the North-Central South of Point Arena Groundfish Management Area. To allow additional fishing opportunities in this region would significantly reduce fishing opportunities in other regions so as to keep within the blue rockfish harvest guideline. The Department projects that given the proposed season structure the entire recreational blue rockfish harvest guideline will be taken in 2009 and 2010. The Department and the Commission do recognize charter boats, or commercial passenger fishing vessels (CPFVs) as a user group as evidenced by inclusion of CPFV representatives on the Department's Groundfish Taskforce, and on the Council's Groundfish Advisory Sub-panel. Lastly, CPFVs are a significant component of the California Recreational Fishery Survey sampling efforts.</p> <p>C. See Comment #4, response C. Additionally, the Department does not have specific economic information on Commercial passenger fishing vessel revenues as they are private businesses.</p>

Comment #, Format, Name, Date, Location	Summary of Comment	Department Response
<p>Comment #7 E Mike Hart, Eureka, CA mike@humboldtinvestigations.com 10/9/2008</p> <p>E= Electronic Mail, L= Letter, O= Oral Comment</p>	<p>A. Requesting that the Department hold a public meeting in the Eureka area. Public meetings were held somewhere to collect input regarding 2009 and 2010, but why weren't any held in Eureka?</p> <p>B. Does not think the Yelloweye Rockfish is overfished in the Northern Management Area.</p> <p>C. The Department could do a better job of obtaining data. Biologists should accompany enforcement personnel to collect data in the field.</p>	<p>A. See Comment #1, response A.</p> <p>B. See Comment #3, response A.</p> <p>C. The California Recreational Fisheries Survey (CRFS), implemented in 2004, collects the data used in making catch estimates and projections. The survey is a joint effort through the Department, NOAA Fisheries Service, and the Pacific States Marine Fisheries Commission. The CRFS program collects catch and effort data for all finfish species on a fine geographic resolution, and has increased sampling of private/rental boats and commercial passenger fishing vessels. The CRFS field samplers are trained in finfish identification. Before the opener and throughout the season CRFS Supervisors verify that their respective samplers are correctly identifying catch. Samplers are equipped with rockfish ID guides to aid them in identification and are instructed to take photographs of any fish they cannot identify for later clarification.</p> <p>Fisheries data needs to be collected in a statistically-valid manner in order to be used in estimating catch or species abundance. Sampling protocols are set in advance and adhered to by samplers. Working in conjunction with wardens is not feasible as their priority is enforcement of laws and regulations rather than data collection.</p>

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

A rulemaking file with attached file index is maintained at:
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IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change: No alternatives were identified.

(b) No Change Alternative:

Season for all groundfish and associated species:

The No Change Alternative would cause allowable harvest limits to be exceeded based on current catch projections. This would be contrary to federal regulations which require that the fishery remain within its harvest guideline. It is also contrary to rebuilding plans for yelloweye and canary rockfishes.

Management Lines:

The No Change Alternative does not allow for finer-scale regional management that comes with having an additional management line at Point Arena. As a result, fishing opportunities may be lost in order to stay within the optimum yield for yelloweye rockfish.

Bag limits for bocaccio, bronzespotted rockfish and cabezon:

The No Change Alternative does not provide for additional fishing opportunities for bocaccio and cabezon, and does not provide protection for bronzespotted rockfish as a precautionary measure.

Gear restrictions when fishing for sanddabs and other flatfish:

The No Change Alternative would require unnecessary restrictions on the sanddabs fishery and would not conform to federal regulations.

Definition of depth constraint:

Under the No Change Alternative the current definition of a “depth constraint” is unclear as it does not specify under what conditions a depth constraint is defined by a depth contour line or a set of federal waypoints. The new language would clearly define a “depth constraint” as an area where fishing is restricted in waters shallower than 30 fathoms using general depth contour lines and in waters equal to or deeper than 30 fathoms by connecting the appropriate set of waypoints adopted in Federal regulations (50 CFR Part 660, Subpart G). The No Change Alternative would result in continued confusion regarding the two competing definitions.

- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The range of proposed management actions that would limit recreational groundfish fishing in one or more of the Groundfish Management Areas for one or more species of fish may have adverse impacts to some businesses in California. Sport fishing business owners, boat owners, tackle store owners, boat manufacturers, vendors of food, bait, fuel and lodging, and others that provide goods or services to those that recreationally pursue groundfish off California may be adversely affected to some degree from loss of business if the 2009 and 2010 seasons are restricted compared to previous management cycles. However, anticipated impacts are speculative and would vary considerably by geographic location and by the nature and extent of the regulatory action taken. Additionally, it should be noted that the proposed regulatory actions would not apply to those recreationally targeting groundfish from shore or by diving, which would lessen impacts to some businesses such as dive and kayak shops.

Furthermore, while some coastal areas rely more heavily on boat-based

sport groundfish fishing activity, there are other areas in which it comprises only a small amount of the overall fishing effort. For 2007, the Department estimates that recreational anglers in ocean waters throughout California made about 3.7 million fishing trips. It is not possible to approximate how many of these trips would not be taken exclusively as a result of the proposed regulatory action. It is important to recognize that in all coastal areas of California there is still recreational ocean fishing opportunity for other desirable target species that are not managed as part of the groundfish complex—namely albacore, halibut, surf perches, bass, and others. Fishing opportunities for these species would not be impacted by the proposed regulation changes. When recreational anglers are prohibited or curtailed from targeting one particular species or groups of species due to season or area closures, oftentimes they will mitigate by changing target species or relocating their effort.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The proposed regulatory action could produce some impact on the creation or elimination of jobs or businesses that rely on recreational fishing for groundfish and associated species. However, the degree of impact is highly speculative in nature and cannot be quantified. See response to X(a) above.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs Mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Updated Informative Digest/Policy Statement Overview

Under California law, the California Fish and Game Commission (Commission) adopts regulations for recreational fishing in state waters zero to three miles from shore. The Pacific Fishery Management Council (Council), consisting of representatives from west coast states, recommends management measures for fisheries operating in federal waters three to 200 miles from shore. These management measures are established as federal regulations by NOAA Fisheries Service. For consistency, ease of enforcement, and to avoid confusion on the part of recreational fishermen, the Commission routinely adopts regulations to bring state law into conformance with federal rules for groundfish and other federally-managed species. The proposed changes described in this action would make the requisite changes for the 2009 and 2010 seasons.

There are 90 species of groundfish that occur in state and federal waters off the coast of California, including several species of rockfish, lingcod, cabezon, kelp greenling, California scorpionfish, some flatfish species, and some shark species. These “federal groundfish” species are managed by the Council under the Pacific Coast Federal Groundfish Fishery Management Plan (GFMP) (Magnuson-Stevens Fisheries and Conservation Act 16 U.S.C Section 1851 et seq.).

California sheephead, ocean whitefish and all greenlings of the genus *Hexagrammos* are species that occur almost exclusively within state waters in California and are managed by the Department. These state-managed species, otherwise identified as “associated species” are known to be caught with federal groundfish species, and thus are regulated in conjunction with federal groundfish.

At its June meeting, the Council adopted new optimum yields for some federal groundfish species along with harvest guidelines for the different fishery sectors for 2009 and 2010. Management measures (e.g., seasons, depth constraints, bag limits) were also decided by the Council to keep within these optimum yields and harvest guidelines for each state and sector. Analysis of past years’ catch is used to determine which management measures are expected to keep each fishery sector within its harvest guideline.

Optimum yields set by the Council are based on stock assessments (analyses of current population size), or if a stock assessment is not available, average recent catches are used as a proxy, and are set to maintain healthy stocks. If a stock assessment reveals that the current population size is at or below 25 percent of the unfished biomass (the historic population size), it is considered “overfished”. Federal law requires that steps be taken to rebuild overfished stocks under strict guidelines that place an emphasis on a reasonable likelihood of achieving success within specified time periods.

Currently there are six groundfish species in California that are considered overfished: bocaccio, canary rockfish, cowcod, darkblotched rockfish, widow rockfish, and yelloweye rockfish. Rebuilding plans for each of these species have resulted in the need to set strict harvest guidelines and tailor management to ensure that fishery impacts are minimized. For California's recreational fishery, significant constraints to fishing activities in northern waters will be needed to keep catches of yelloweye rockfish within the allowable harvest guideline for the 2009 and 2010 seasons, similar to 2007 and 2008.

While not designated as "overfished", some federal groundfish species stock assessments show a need to enact more constraining regulations to keep catches within established harvest guidelines, even in the absence of a rebuilding plan. For California's recreational fishery, additional restrictions off central California will be needed to keep catches of blue rockfish within the allowable limit for 2009 and 2010.

It is virtually impossible to target an individual rockfish species, thus fishing for all rockfish has to be restricted to keep within the optimum yield for a constraining species. A "constraining" species is one whose harvest level is low enough that fishing for other co-occurring species becomes limited so that the constraining species' harvest level is not exceeded. Yelloweye rockfish and blue rockfish are considered to be the two most constraining species for California's recreational fishery. Therefore, these species were the primary determinants for the chosen season lengths and depth constraints for fishing for all groundfish and associated species for 2009 and 2010. Canary rockfish, another overfished species, has in the past been a constraining species and could potentially be a constraining species for the central California management areas in 2009 and 2010, which would be addressed in a future rulemaking package if necessary.

Yelloweye rockfish are primarily caught with a mix of other shelf rockfish species north of Point Arena (Mendocino County) in waters deeper than 20 fathoms. For 2009 and 2010, the recreational fishery harvest guideline for yelloweye rockfish will continue to require conservative fishing seasons that may occur only in waters that are 20 fathoms and less in depth.

Blue rockfish is a dominant species in the recreational fishery in California. To stay within the new harvest guideline for this species, it was necessary for the Council to reduce the fishing season length by two weeks in central California.

In order to make the State's regulations consistent with new federal rules that will be established by NOAA Fisheries following the June 2008 Council action, the proposed changes identified in this regulatory package are needed to Title 14 regulations regarding recreational groundfish fishing in State waters. The resulting season structure and depth restrictions adopted by the Council are provided in Table 1. The proposed regulatory changes will affect boat-based anglers only; exceptions for shore-based anglers and divers would remain in effect.

Table 1. Proposed season structure and depth restrictions for the California recreational groundfish fishery for 2009 and 2010, adopted for federal waters by the Council in June 2008.

Source: U.S. Navy, 2000.

Management Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
Northern	CLOSED				Open < 20 fm, May 15 - Sep 15				CLOSED				
North-Central N. of Pt. Arena	CLOSED				Open < 20 fm May 15 - Aug 15				CLOSED				
North-Central S. of Pt. Arena	CLOSED					Open < 30 fm, Jun 13 - Oct 31					CLOSED		
Monterey South-Central	CLOSED				Open < 40 fm, May 1 - Nov 15								CLOSED
Morro Bay South-Central	CLOSED				Open < 40 fm, May 1 - Nov 15								CLOSED
Southern	CLOSED		Open < 60 fm, Mar 1 - Dec 31										

- Modifications to Section 27.25, Northern Groundfish Management Area.

The Department took emergency action in August 2008 (OAL# 2008 0815 04E) to establish a May 1 through September 2 season with a maximum depth restriction of 20 fathoms (120 feet) for groundfish and associated species. Proposed regulations would change the fishing season, for the waters between the Oregon border and the 40° 10' North Latitude management line near Cape Mendocino (Humboldt County), for all groundfish and associated species by modifying the season length to May 15 through September 15. The proposed regulations would also make permanent the maximum depth restriction of 20 fathoms (120 feet) implemented through the emergency action. These changes are necessary to keep yelloweye rockfish catch within the harvest guideline as discussed above.

- Modifications to Section 27.30, North-Central Groundfish Management Area.

The Department took emergency action in August 2008 (OAL# 2008 0815 04E) to split the North-Central Management Area into two distinct regions - the North-Central North of Point Arena Groundfish Management Area, for waters between the 40° 10' North Latitude management line and Point Arena (38° 57.50' North Latitude; Section 27.30, Title 14, CCR), and the North-Central South of Point Arena Groundfish Management Area, for waters between Point Arena and Pigeon Point (San Mateo County; see below; modifications to Section 27.32, Title 14, CCR). Additionally, the emergency action established a maximum depth restriction of 20 fathoms (120 feet) for groundfish and associated species and a June 1 through November 30 season. The proposed regulations would make the 20 fathom maximum depth restriction permanent, and would modify the fishing season to May 15 through August 15. Splitting the North-Central Management Area into two regions would allow for differing regulations north and south of Point Arena, and allow for finer-scale regional management. The take of yelloweye rockfish north of Point Arena is significantly higher than that south of Point Arena.

The August 2008 emergency action (OAL# 2008 0815 04E) removed regulations pertaining to the Farallons Closure Area, the Cordell Bank Closure Area, and the exception allowing the year-round take of leopard shark in several bays from this

section and relocated them to Section 27.32, because these rules do not apply within the re-defined geographic range of this management area. The proposed regulation would make permanent the restructuring of the management areas, with their respective closure areas and leopard shark exception.

- *Modifications to Section 27.32, North-Central South of Point Arena Groundfish Management Area.*

The Department took emergency action in August 2008 (OAL# 2008 0815 04E) to establish Section 27.32 with regulations pertaining to the waters between Point Arena (Mendocino County) and Pigeon Point (San Mateo County). These regulations include a June 1 through November 30 season for groundfish and associated species, along with a maximum 30 fathom (180 feet) fishing depth restriction. The proposed regulations would make permanent the 30 fathom maximum depth restrictions, and would modify the fishing season to June 13 through October 31.

The August emergency action (OAL# 2008 0815 04E) removed the regulations pertaining to the Farallones Closure Area, the Cordell Bank Closure Area, and the exception allowing the year-round take of leopard shark in several bays from Section 27.30 and relocated the regulations here without change, because these rules apply within the newly established management area. The proposed regulation would make permanent the restructuring of the management areas, with their respective closure areas and leopard shark exception.

- *Modifications to Section 27.35, Monterey South-Central Groundfish Management Area.*

Existing regulations establish a May 1 through November 30 season for groundfish and associated species, with a maximum fishing depth restriction of 40 fathoms (240 feet). Proposed regulations would reduce the fishing season for all groundfish and associated species to May 1 through November 15, maintaining the 40 fathom depth restriction. Reducing the season by two weeks is expected to keep blue rockfish catch within the new harvest guideline.

- *Modifications to Section 27.40, Morro Bay South-Central Groundfish Management Area.*

Existing regulations establish a May 1 through November 30 season for groundfish and associated species, with a maximum fishing depth restriction of 40 fathoms (240 feet). Proposed regulations would reduce the fishing season for all groundfish and associated species to May 1 through November 15, maintaining the 40 fathom depth restriction. Reducing the season by two weeks is expected to help to keep blue rockfish catch within the harvest guideline.

- *Modifications to Sections 28.26 California Sheephead; 28.27 Lingcod; 28.28 Cabezon; 28.29 Kelp Greenling, Rock Greenling; 28.48 Pacific Sanddab, Rock Sole, Sand Sole, Butter Sole, Curlfin Sole, Rex Sole and Flathead Sole; 28.49 Dover Sole,*

English Sole, Petrale Sole, Arrowtooth Flounder, and Starry Flounder; 28.51 Spiny Dogfish, Soupfin Shark; 28.52 Big Skates, California Skates, and Longnose Skates; 28.53 Ratfish, Rattails and Codlings; 28.54 California Scorpionfish (Sculpin); 28.55 Rockfish (Sebastes); 28.56 Leopard Shark; 28.57 Pacific Cod, Pacific Whiting, Sablefish, and Thornyheads; and, 28.58 Ocean Whitefish.

The listed sections list the seasons and fishing depths for these species or species groups. Additionally, some species or species groups have size limits, bag limits, gear restrictions, exceptions for leopard shark and/or exceptions for “other flatfish”. The Department took emergency action in August 2008 (OAL# 2008 0815 04E) to establish seasons and fishing depths for these species or species groups. The proposed regulations would make the changes permanent for each of the sections, and change season dates and/or depth constraints to match the proposed regulations for the different Groundfish Management Areas discussed above.

- Modifications to Section 28.28(b), Cabezon Bag Limit.

Existing regulations provide for a one fish bag limit for cabezon within the 10-fish aggregate bag limit for rockfish, cabezon and greenling, the RCG complex. Proposed regulations would increase the cabezon bag limit from one fish to two fish, within the RCG bag limit. The Department analyzed potential impacts of an increase in the recreational cabezon bag limit from one to two fish within the RCG bag limit. Results of the analysis show that an increase in the bag limit is not projected to result in exceeding the recreational harvest guideline for this species. The proposed action could reduce impacts on other fish that would be caught to replace discarded cabezon and decrease waste of discarded dead cabezon.

- Modifications to Section 28.55(b)(1), Bag Limit for Bronzespotted Rockfish.

Proposed regulations would include the bronzespotted rockfish (*Sebastes gilli*) as a prohibited rockfish species (no retention, or bag limit of zero). The bronzespotted rockfish is not described as an overfished species because there has not been a formal stock assessment completed; however, anecdotal information suggests its abundance may be low. The proposed change was adopted by the Council as a precautionary measure for 2009 and 2010 to protect bronzespotted rockfish until more information becomes available.

- Modifications to Section 28.55(b)(3), Bag Limit for Bocaccio.

Existing regulations provide for differing bag limits within the RCG bag limit for bocaccio north and south of the 40° 10' North Latitude management line, with a two fish bag limit in the Northern Management Area, and a one fish bag limit in the remaining management areas, except that there is a zero fish bag limit in the Cowcod Conservation Area. Proposed regulations would allow for a statewide two fish bag limit within the 10 fish RCG bag limit; the zero fish bag limit in the Cowcod Conservation Area would remain unchanged. The coastwide bocaccio optimum yield increased for 2009 and 2010; therefore the statewide recreational fishery can retain two fish while remaining within the bocaccio harvest guideline. The proposed action could reduce

impacts on other fish that would be caught to replace discarded bocaccio, decrease waste of discarded dead bocaccio, and allow for the same limit statewide.

- Modifications to Sections 27.25 Northern Groundfish Management Area; 27.30 North-Central Groundfish Management Area; 27.35 Monterey South-Central Groundfish Management Area; 27.40 Morro Bay South-Central Groundfish Management Area; 27.45 Southern Groundfish Management Area; 27.50 Cowcod Conservation Areas; and, Sections 28.48 Pacific Sanddab, Rock Sole, Sand Sole, Butter Sole, Curlfin Sole, Rex Sole and Flathead Sole, Pertaining to the Elimination of Gear Restrictions when Fishing for Sanddabs and Other Flatfish.

Existing regulations allow Sanddabs and “Other Flatfish” to be taken in the California recreational fishery when fishing for rockfish, lingcod, and associated species is closed and in depths where fishing for rockfish is prohibited, providing that anglers are limited to not more than 12 No. 2 or smaller hooks and up to two pounds of weight. A No. 2 hook means a fishing hook with a gap not greater than 7/16 inch between the hook point and the shank. These regulations were implemented in 2004 to reduce bycatch of overfished rockfish species. The specified gear is the standard gear used for targeting sanddabs regardless of whether the rockfish season is open or closed.

The Department analyzed the merits and shortcomings of the sanddab and “Other Flatfish” gear restrictions. The analysis revealed that there has been no appreciable change to impact rates on overfished species, or any species of the genus *Sebastes*, before and after gear restrictions were implemented and that impacts are presently negligible. Additionally, both California Recreational Fisheries Survey samplers and party/charter boat operators indicated that the bycatch of rockfish species while fishing for sanddabs and “Other Flatfish” is minimal. For regulation simplicity, the Council repealed the aforementioned gear restrictions pertaining to sanddabs and “Other Flatfish”. The proposed regulatory changes would conform to action taken by the Council.

- Clarifying Changes to Section 27.20(a) Pertaining to the Definition of “Depth Constraint”.

Existing regulations provide the definition of depth constraint as based on either general depth contour lines or a set of federal waypoints. Proposed regulations would clarify that the Department uses two different definitions of “depth constraint” depending on whether fishing is occurring in waters greater than or equal to 30 fathoms or waters that are shallower than 30 fathoms. Areas equal to or deeper than 30 fathoms shall use a line determined by connecting the appropriate set of waypoints adopted in Federal regulations, and areas shallower than 30 fathoms shall use general depth contour lines for approximating depth at which the angler is fishing.

- Clarifying Changes to Section 27.20(b) Pertaining to Special Closure Areas.

The Department took emergency action in May 2008 (OAL# 2008 0505 01E) to clarify that unless there is a special exemption, the take of groundfish and associated species

is prohibited in special closure areas (e.g., Cordell Banks closure) even when the rest of the management area is open. This emergency action expired on November 5, 2008; however, the proposed regulation would make the change permanent.

- Clarifying changes to Section 28.56 Leopard Shark.

Current regulations allow for the take of leopard shark in waters 20 fathoms or less from March through December within the Cowcod Conservation Area. This is contrary to Section 28.50 Cowcod Conservation Area which does not allow for the take of leopard shark within the Cowcod Conservation Area. Currently, there are exceptions allowing the take of leopard shark in enclosed bays; however, there are no enclosed bays within the Cowcod Conservation Area and there was never any intent to allow fishing for leopard sharks within the Cowcod Conservation Area. The proposed regulation would remove this inconsistency by prohibiting the take of leopard shark within the Cowcod Conservation Area.

Non-substantive modifications were made to the originally proposed language of the Initial Statement of Reasons to reflect the expiration of the May 2008 emergency action (OAL# 2008 0505 01E) on November 5, 2008. The May 2008 emergency actions included season length and depth restrictions for the different Groundfish Management Areas, section headings and clarification for special closure areas in Section 27.20, and Marine Region website address, authority, and reference updates for most of the amended sections. Most of these changes from the May 2008 emergency action are non-substantive and were added back into this Final Statement of Reasons as new changes. Substantive changes, such as the season length and depth restrictions, were fully described in the notice for this package (the Initial Statement of Reasons) and will be carried over with this approved regulatory package. At its November 14, 2008 meeting, the Commission approved the proposed regulatory amendments to the recreational groundfish fishing regulations for 2009 and 2010.

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
ADDENDUM TO FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 27.20, 27.25, 27.30, 27.32, 27.35, 27.40, 27.45, 27.50, 27.51,
28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55,
28.56, 28.57, and 28.58;
Title 14, California Code of Regulations,
Re: Recreational Fishing Regulations For Federal Groundfish
and Associated Species For 2009 and 2010

On January 23, 2009, the Commission withdrew the recreational Groundfish fishing rulemaking file (OAL File No. 2008-1217-03S) in order to provide for a public notice of “sufficiently related” regulatory text.

On January 23, 2009, the Commission mailed the notice, including the “sufficiently related” text, and the originally noticed text to those persons identified in Section 44, Title 1, CCR. The Commission exercised its powers under Section 202 of the Fish and Game Code, as this notice was not available for the full 15 days required by Government Code Section 11346.8. At its meeting on February 5, 2009, the Commission confirmed its adoption/amendment of the recreational Groundfish fishing regulations.

Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

The Commission received one comment letter during the comment period (January 23 through February 4, 2009).

- Mr. Jimmy Smith, Humboldt County Board of Supervisors, February 2, 2009:

Comment: Mr. Smith states he did not receive the notice until February 2, 2009 which does not provide much time to engage in public outreach.

Response: The notice was mailed on January 23, 2009 and provided for a 12-day comment period under Section 202 of the Fish and Game Code.

Comment: “...under Section 27.25, the Northern Groundfish Management Area, the Commission proposes changes in the season opener from May 1 to May 15 and a closure by September 15th. This may require some input from fishermen in our area. It has not been brought to my constituents’ attention yet.”

Response: The change in season date is outside the scope of the re-notice. This change was described in the original notice for this rulemaking which was mailed to Mr. Smith on September 26, 2008.

Comment: "...the reduction from 30 fathoms to 20 fathoms is significant and may not be necessary throughout our Northern Groundfish Management Area."

Response: The proposed regulation changes, including the depth restriction of 20 fathoms in the Northern Management Area, will conform regulations in state waters (0-3 miles offshore) and federal waters (3-200 miles offshore) in 2009. Conservative depth restrictions are a necessary management tool, as stated in the ISOR,

"The proposed regulations [for the Northern Groundfish Management Area] would also make permanent the maximum depth restriction of 20 fathoms (120 feet) implemented through the emergency [May] action. These changes are necessary to keep yelloweye rockfish catch within the harvest guideline..."

Comment: "Section 28.49 proposes to limit Dover, English, Petrale, Arrowtooth and Starry Flounder to a May 15 to September 15th season in waters shallower than 20 fathoms. I urge you ... not to implement these measures..."

Response: The comments received concerning Section 28.49, Title 14, CCR, Dover Sole, English Sole, Petrale Sole, Arrowtooth Flounder, and Starry Flounder are outside the scope of this re-notice. This change was described in the original notice for this rulemaking which was mailed to Mr. Smith on September 26, 2008.